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SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE APPLICATION
OF CLIFFORD MURRAY FOR AN ORDER
POOLING INTERESTS IN THE DRILLING
UNIT COMPRISING SECTION 2
TOWNSHIP 2 SOUTH, RANGE 1 EAST, U.
S. M., Uintah County, UTAH

DIVISION'S RESPONSE TO POOLING
REQUEST
AND
MOTION TO DISMISS CLAIMS OR
ORDER PETITIONER TO MODIFY THE
APPLICATION
AND
MOTION TO CONTINUE

Docket No. 2010-019

Cause No. 131-130

The Division of Oil, Gas and Mining through its counsel, hereby Responds to the Application of Clifford Murray for an order pooling the interests in the Drilling Unit comprising Section 2, Township 2 South, Range 1 East, U.S. M. Uintah County, with objections as to the matters plead and relief requested, and moves the Board to continue the matter, and either dismiss portions of the Request for Agency Action or grant leave to Petitioners and others to amend their pleadings for the reasons stated herein.

BACKGROUND

This Application for pooling pertains to the same Section 2 of Township 2 South R 1 East, U.S. M. Uintah County and the same well (1-2B1E) as the consolidated matters referred to the Division for investigation and negotiations at the January 27, 2010 Board hearing (Saundria Whitmer, et al., v. Mountain Oil and Gas, Inc. Docket Nos. 2010-001 to 2010-007, 2010-014 and 2010-018; Cause No. 131-127) The Division reported the results of its investigations and negotiations at the March 24, Board Hearing. The Board ordered that the seven of the matters (those not settled) be continued without date due to concerns about the validity of some of the existing leases that were challenged by two of the Petitioners in that matter and as a consequence questions concerning the status of the Communitization Agreement (CA). The Board also ordered that the monies from production be placed into a federally insured interest bearing escrow account. This matter which concerns the same section of land, the same well and same CA, is saddled with the same uncertainty.

Since this matter was filed, Petitioners in the January Request for an Investigation and Negotiations, Joyce Murdock, Mac E. Murdock, Saundria Whitmer, have filed a Response asking for “pooling of the interests of the interest owners”, setting a royalty, finding that they are due proceeds which are attributable to their unleased working interests, and asking for the same orders of payment interest and penalties sought in the prior action under Utah Code §40-6-9.

Additionally, Benny Murdock, Beverly Soli-Maritan, Burnell Rich and Sherri Rich have each filed an identical “Response” seeking the same relief. It is believed that each of these Responses were prepared and filed by the Petitioner in this matter, Clifford Murray.

DIVISION’S OBJECTIONS TO APPLICATION

The Division objects to the filing of this request and asks that the matter be continued in order that (1) the Petitioner and those filing Responses may make requests to join the existing CA; (2) the Petitioner has time to provide the Division with the required identification of the royalties and interest owners and other information that is required to be part of an order for pooling; and (3) the BLM and BIA will have time to decide if they will act on the current request for termination of the existing Tribal leases and CA.

In addition, the Division asks that the claims for relief under Utah Code §40-6-9 be dismissed or that the Petitioner and those filing Responses be granted leave to amend their pleadings to remove the requests for penalties and relief provided for by that section.

ARGUMENT

The Division objects to the RAA primarily for the reason that the status of the Petitioner and Respondents under the existing Communitization Agreement (CA) is not clear and is subject to substantial uncertainties that the Petitioner and Respondents should first address. If there is an existing CA, (CA#3 as alleged) the Petitioner and Respondents should first make an attempt to join it. He has not alleged that he has done so. Absent such a request and denial, there is no jurisdiction for the Board under Utah Code § 40-6-6 to order his interests pooled. The Board has authority only where there is no such agreement. There is a CA and it is not clear that the Petitioner and

Respondents would not be added to it and thereby avoid the need for this hearing. If that request is denied the Board may then order his interests pooled and subject to the terms of the existing or a new CA.

Secondly, the Request asks the Board for an order “pooling the interests of the interest owners in the drilling unit as of April 1997.” The identity of these persons are is not alleged or identified and the right of the Petitioner as merely a small interest owner to force pool all of the interest owners is questionable especially where there are tribal lands involved and the majority of owners already signed on to an existing CA. To make such a request the Petitioner must at a minimum give notice to all of the mineral owners, and such notice has not been alleged. Those who have filed Responses, may be considered to have joined in the request, but notice of their Responses have also not been provided to the other owners and the time to respond to their requests has not expired.

Thirdly, as noted in the prior actions involving this well and Section, there have been objections filed with the BIA challenging the status of the leases and the CA. If these objections are found valid and the existing CA is terminated, then there may be reason to proceed with a pooling request. However, it would be a different CA. Since there is substantial Tribal ownership and since the well is on Tribal lands the first action would be to release the Tribal acreage and then request the BIA to form a new CA. At best, the Board could Order that the Petitioner be joined in the new CA for the tribal lands. At this time it is not reasonable for the Board to make such an order while the objections are unresolved.

Fourth, the Application is incomplete, and Petitioner has not filed the Exhibits required for a pooling order in a timely manner. The information required such as the percentage of ownership for

each tract, the royalty for each tract, and the costs of plugging and abandoning the well and other matters have not been plead and it is not clear how the Petitioner will satisfy these statutory requirements.

In addition, the Application for forced pooling improperly combines the requested relief with the remedies provided for by Utah Code § 40-6-9 for the protections for proceeds from oil and gas production with this request for pooling. The Division objects to the inclusion of these claims in the Request and asks that the Board either strike these claims or order Petitioner to amend his Petition to remove the relief related to non-payment of proceeds. A pooling hearing is not an appropriate time for resolving such matters that require notice to the Operator. Of those who have filed a Response, their 'payment and penalty claims' under Utah Code § 40-6-9 should also be stricken since they have either been heard and resolved, or should be properly plead, noticed and if appropriate referred to the Division for investigation and negotiations.

Finally, the Petitioner and those who have filed Responses should be provided time to obtain counsel. The orchestration by Mr. Murray of the claims of many parties who may have an interest in this well has crossed the line. Since Mr. Murray now claims an interest in the well, there is a question if the many others who have been advised by Mr. Murray have a need for separate advice. Mr. Murray's actions have gone from assistance and cooperation to advocacy and legal advice on behalf of those who he has contacted. The result has been uninformed parties filing copies of his Petition. The Rules of Procedure before the Board require that a person appearing on behalf of other persons be a member of the Utah State Bar. R641-102. One of the reasons for such a requirement is to avoid the type of improper pleadings and possible conflicts of interest that have occurred and that

may be the case in this matter. At the least the many persons who are following Mr. Murray's actions should be allowed time to obtain the advice of counsel.


**MOTION TO CONTINUE AND MOTION
TO STRIKE OR ORDER PETITIONER TO AMEND REQUEST**

The Division asks that the hearing of this Request For Agency Action be continued until the May Hearing or without date until such time as the status of the existing CA is resolved and Petitioner and Respondents's rights to join in the CA are resolved. As a prerequisite to this action the Petitioner must first make application to join the existing CA. Those who have filed Responses should also be required to make similar requests. In addition, there are many other problems with the form of this Application and required exhibits that justify continuance. The application is incomplete and the required exhibits required within 30 days by R641-105-500 have not been provided.

To the extent that the Request for Agency Action and the Responses seek relief in the form of payments and Penalties under Utah code § 40-6-9, the Division asks that the claims be stricken or that the Petitioner and those who have filed Responses be granted leave to amend their pleadings to clarify their requests.

DATED this 19th day of April, 2010.

MARK L. SHURTLEFF
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing DIVISION'S RESPONSE AND MOTION TO STRIKE AND MOTION TO CONTINUE , for Docket Nos. 2010-019, Cause No. 131-130 to be mailed with postage prepaid to the address shown and emailed as shown to the following persons this 19th day of March 2010

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